

1 MANATT, PHELPS & PHILLIPS, LLP
2 RONALD S. KATZ (California Bar No. 085713)
3 E-mail: rkatz@manatt.com
4 RYAN S. HILBERT (California Bar No. 210549)
5 E-mail: rhilbert@manatt.com
6 1001 Page Mill Road, Building 2
7 Palo Alto, CA 94304-1006
8 Telephone: (650) 812-1300
9 Facsimile: (650) 213-0260

10 Attorneys for Defendant/Counterclaim and
11 Third-Party Plaintiff Maritz Inc.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT
14 SAN FRANCISCO DIVISION

15 VISA U.S.A. INC.,

16 Plaintiff/Counterclaim
17 Defendant,

18 v.

19 MARITZ INC., d/b/a MARITZ
20 LOYALTY MARKETING,

21 Defendant/Counterclaim
22 and Third-Party Plaintiff,

23 v.

24 CARLSON MARKETING GROUP, INC.

25 Third-Party Defendant.

CIVIL ACTION NO. C 07-5585 JSW

DECLARATION OF MARK PETERMAN

1 I, Mark Peterman, hereby declare under penalty of perjury as follows:

2 1. I am a Division Vice President of Marketing at Maritz Inc. ("Maritz"). I was
3 heavily involved in the Visa Extras Rewards Program project from approximately August 2006
4 until after Visa terminated the Master Services Agreement (the "Agreement") in the Spring of
5 2007.

6 2. On Monday, July 23, 2007, Steve Gallant of Maritz met with Stu Vincent (also of
7 Maritz) and me. The purpose of the meeting, which had been previously scheduled, was to
8 prepare for a meeting that was scheduled for the next day, July 24, with Visa at Maritz's
9 headquarters in Fenton, Missouri. The purpose of the meeting with Visa was to discuss the
10 approximately \$5.2 million in invoices that Maritz had submitted to Visa in order to determine
11 how much Maritz would be paid.

12 3. When Mr. Vincent and I met with Mr. Gallant, Mr. Gallant showed us a proposed
13 Alternative Dispute Resolution Protocol that he had received from Visa's counsel, Rod
14 Thompson, and asked us about the second sentence in the Protocol which stated that "Each Party
15 claims the other should make a payment to resolve the dispute." Mr. Gallant indicated that he
16 thought this language was a mistake, but wanted to know if we knew of any claim by Visa that
17 Maritz should pay it any money. We told him we did not.

18 4. I also told Mr. Gallant during this meeting that I had spoken with Tad Fordyce of
19 Visa just a couple of days earlier, on Friday, July 20, 2007, in order to confirm my expectation of
20 what was going to be covered in the July 24 meeting with Visa. I told Mr. Gallant that Mr.
21 Fordyce had confirmed that we (i.e., Maritz and Visa) would cover Maritz's invoices, and that
22 Mr. Fordyce had said nothing about Visa having or making any claim that Maritz should make a
23 payment to Visa.

24 5. More specifically, when I called Mr. Fordyce on July 20, 2007, I told him that we
25 (Maritz) wanted to make sure that our expectations were set correctly for the meeting on July 24,
26 that I wanted to confirm that he had our invoices and the detailed back-up to our invoices
27 (relating to the approximately \$5.2 million that Maritz was owed), and to let him know that we
28 would be prepared to discuss the invoices. He confirmed that he had our invoices and the back-

1 up, and that was what they were coming to discuss. He indicated that Visa did not share our
2 perspective as to the amount owed on the invoices, but never said anything indicating that Visa
3 believed that Maritz should pay anything or that Maritz owed tens of millions of dollars. My
4 clear understanding based on my conversation with Mr. Fordyce was that Visa was willing to pay
5 Maritz something, but not the full amount that Maritz believed Visa owed.

6 6. I subsequently learned on July 23, 2007, that Visa's counsel Rod Thompson was
7 claiming that Maritz owed Visa tens of millions of dollars. I was very surprised by Mr.
8 Thompson's claims.

9 7. I had had numerous discussions with Tad Fordyce and other Visa personnel in late
10 2006 through Visa's termination of the Agreement in the Spring of 2007. At no time had anyone
11 from Visa told me that Visa believed or was claiming that Maritz owed Visa tens of millions of
12 dollars or that liquidated damages were accruing. In fact, I knew in the first part of November
13 2006 that Visa had agreed to waive liquidated damages and that the parties had agreed, in light of
14 the numerous problems, difficulties and delays encountered in connection with the Visa project,
15 that Maritz was proceeding on a "best efforts" basis.

16 8. In addition, I participated in meetings and discussions in January and February of
17 2007 which resulted in Maritz and Visa agreeing to a new target launch date of July 2, 2007. At
18 no time during any of these discussions did Visa ever claim or indicate to me that liquidated
19 damages were still accruing and/or would accrue through the new launch date. If Visa had done
20 so, Maritz would not have agreed to such an extended launch date of early July 2007.

21 9. In addition, on June 15, 2007, I spoke with David Shepard of Visa. Mr. Shepard
22 indicated that he, Mr. Fordyce and Mr. Fordyce's boss Tim Attinger were available to meet with
23 Maritz in mid-July to discuss Maritz's invoices relating to the \$5.2 million that Maritz said Visa
24 owed. I relayed this information to Mr. Gallant. At no time did Mr. Shepard indicate during our
25 June 15 conversation that Visa expected Maritz to pay anything or that Visa believed it was owed
26 tens of millions of dollars.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this declaration was executed on January 17, 2008.

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5 Mark Peterman
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